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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

SUSAN RATHUNDE, et al.,

Plaintiffs,

v.

JEFFREY HATHAWAY, et al.,

Defendants.

2:10-cv-0046-LDG-PAL

**ORDER**

13 Defendant Jeffrey Hathaway has filed two motions for summary judgment (first motion  
14 #40, opposition #46, reply #47; second motion #49, opposition #54). Hathaway's first motion  
15 "requests an Order dismissing this action" based on Plaintiffs' "unwillingness to conform with  
16 repeated orders from this court." Def.'s Mot. for Summ. J. 3, Apr. 22, 2010, ECF No. 40. The  
17 court, however, is not currently convinced that summary judgment is appropriate based on the  
18 inconvenient delay associated with transferring this case from the District of Arizona. The court is  
19 also not inclined to grant summary judgment based on the alleged impropriety of orders issued by  
20 the District of Arizona, particularly when Hathaway raises such arguments for the first time in his  
21 reply brief. *See Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007). The court will accordingly  
22 deny Hathaway's first motion.

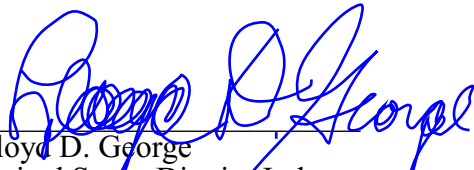
23 Hathaway's second motion argues that summary judgment is proper because Plaintiffs  
24 have failed to produce "a single medical record tying Mrs. Rathunde's claimed injuries to the  
25 subject accident." Def.'s Mot. for Summ. J. 3, Oct. 6, 2010, ECF No. 49. Plaintiffs argue that this  
26 motion is based on a misreading of the medical records provided during Plaintiffs' initial

1 disclosures and is premature because discovery has not yet begun in earnest. The court notes,  
2 however, that the outcome of discovery issues presently pending before Magistrate Judge Leen  
3 directly relate to the parties' respective positions on the present motion. *See* ECF No. 55.  
4 Therefore, in consideration of the foregoing, the court will also deny Hathaway's second motion,  
5 but will further entertain such arguments on subsequent motion if appropriate. Accordingly,

6 THE COURT HEREBY ORDERS that Defendant Hathaway's motions for summary  
7 judgment (#40 and #49) are DENIED.

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9 Dated this 18th day of February, 2011.

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Lloyd D. George  
United States District Judge